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12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 **IVAN VERNARD CLEVELAND,**

16 Plaintiff,

17 v.

18 **BEN CURRY, Warden, et al.,**

19 Defendants.
20

C 07-2809 JF (PR)

**REQUEST FOR
CLARIFICATION OF THE
COURT'S JUNE 24, 2008
ORDER**

21 On June 24, 2008, the Court granted Cleveland an additional thirty days from the time of the
22 order to supplement or amend his opposition to Defendants' motions to dismiss and for summary
23 judgment.

24 But the Court appears to have misconstrued the record in part, stating that the dispositive
25 motions were to be deemed submitted on the date that Defendants' reply brief was due, but that
26 Defendants waived their right to a reply. (Order Granting Pl. Leave Am. Opp'n 2.)
27 Contrariwise, Defendants timely filed a reply on May 15, 2008 (*see* Docket No. 20, the order
28 granting Defendants' request for an extension of time such that the reply would be due on May

1 15, 2008) to Cleveland's opposition to Defendants' dispositive motions (Docket No. 39), which
2 was supported by two declarations (Docket Nos. 40–41).

3 To the extent that the Court's mistaken belief that Defendants waived their right to a reply
4 impacted the order granting Cleveland an extra thirty days to alter his opposition, Defendants
5 seek clarification or alteration of the order. Specifically, the Court's order concludes that the
6 matter will be taken under submission when thirty days pass for Cleveland to file an updated
7 opposition. (Order Granting Pl. Leave Am. Opp'n 2.) This leaves Defendants no chance to file
8 an updated reply to any updated opposition that Cleveland may file—which, in effect, means the
9 Court is waiving Defendants' right to a reply. This action seems based on the Court's mistaken
10 belief that Defendants have waived their right to a reply, rather than having timely filed one.

11 (See Docket Nos. 20, 39–41.)

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1 Defendants thus seek clarification of the Court's June 24, 2008 order to the extent it grants
2 Cleveland an unrequested chance to update his opposition—and without granting Defendants an
3 equal opportunity to update their reply responsively to any new opposition—because, contrary to
4 the Court's understanding, Defendants timely filed a reply and by no means waived their right to
5 one.

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7 Dated: July 2, 2008

8 Respectfully submitted,

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